

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Northern District of Alabama

United States of America)
v.)
) Case No.
) Mag. No. 23-004
Eugenio Danilo Hernandez-Figueroa)
)
)

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 4, 2023, in the county of Jefferson in the
Northern District of Alabama, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. Section 922(o)	Illegal Possession of a Machinegun

This criminal complaint is based on these facts:

See Attached Affidavit of Special Agent Chris Baker.

 Continued on the attached sheet.CHRISTOPHER BAKER Digitally signed by CHRISTOPHER BAKER
Date: 2023.01.09 15:40:59 -06'00'*Complainant's signature*

Chris Baker, Special Agent

Printed name and title

Sworn to before me and signed electronically.

Date: Jan. 9, 2023City and state: _____ Birmingham, Alabama _____


Judge's signature

Staci G. Cornelius, United States Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF COMPLAINT

I, Christopher J. Baker, being duly sworn, depose and state that:

INTRODUCTION AND AGENT BACKGROUND

1. I am an investigator or law enforcement officer of the United States within the meaning of 18 U.S.C. § 2510(7), that is, an officer of the United States who is empowered to conduct investigations of and to make arrests for the offenses enumerated in Titles 18, 19, 21, 26 and 31, of the United States Code and other related offenses. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), Department of Justice, and have been so employed since January 2016. I am currently assigned to the Birmingham, Alabama Field Office. My duties include the investigation of federal firearms offenses and associated violent crime and narcotics offenses.

2. Prior to serving as an ATF Special Agent, I was a Police Officer, Field Training Officer, Firearms Instructor, and General Instructor with the Birmingham Police Department in Birmingham, Alabama, for nearly 8 years. I am a graduate of the Federal Law Enforcement Training Center and the ATF National Academy. I am a graduate of the ATF Firearm Interstate Nexus and Identification training program. I have made well over seven hundred (700) determinations of interstate nexus for firearm and ammunition exhibits.

3. Based on my training and experience as an ATF Special Agent and the facts as set forth in this affidavit, there is probable cause to believe that a violation of 18 U.S.C. Section 922(o) has been committed by Eugenio Danilo Hernandez-Figueroa. I have personally participated in this investigation and am aware of the facts contained herein based upon my own investigation as well as information provided to me by other law enforcement officers. Since this affidavit is submitted for the sole purpose of establishing probable cause to support the issuance of a complaint, I have not included each and every fact known by the government concerning criminal activities committed by Eugenio Danilo Hernandez-Figueroa.

4. On March 14, 2022, Tahji Orr was arrested by the Hoover City Police Department and was found to be in possession of a Glock 9mm machinegun, loaded magazines, unlabeled prescription narcotics, marijuana, and a substance found to contain a mixture of heroin and fentanyl.

5. On June 30, 2022, I received a copy of the federal warrant that had been issued for Tahji Orr's arrest and a copy of the signed indictment after having presented the details of the investigation to a federal grand jury in the Northern District of Alabama. I requested delegation of arrest responsibilities to the United States Marshals Service that was accepted and returned on July 5, 2022. On January 4, 2023, the United States Marshals Service, supported by the Bessemer City Police Department's Special Response Team, arrested Tahji Orr at a residence located at 139

Fox Hollies Boulevard, Bessemer, Alabama, 35020.

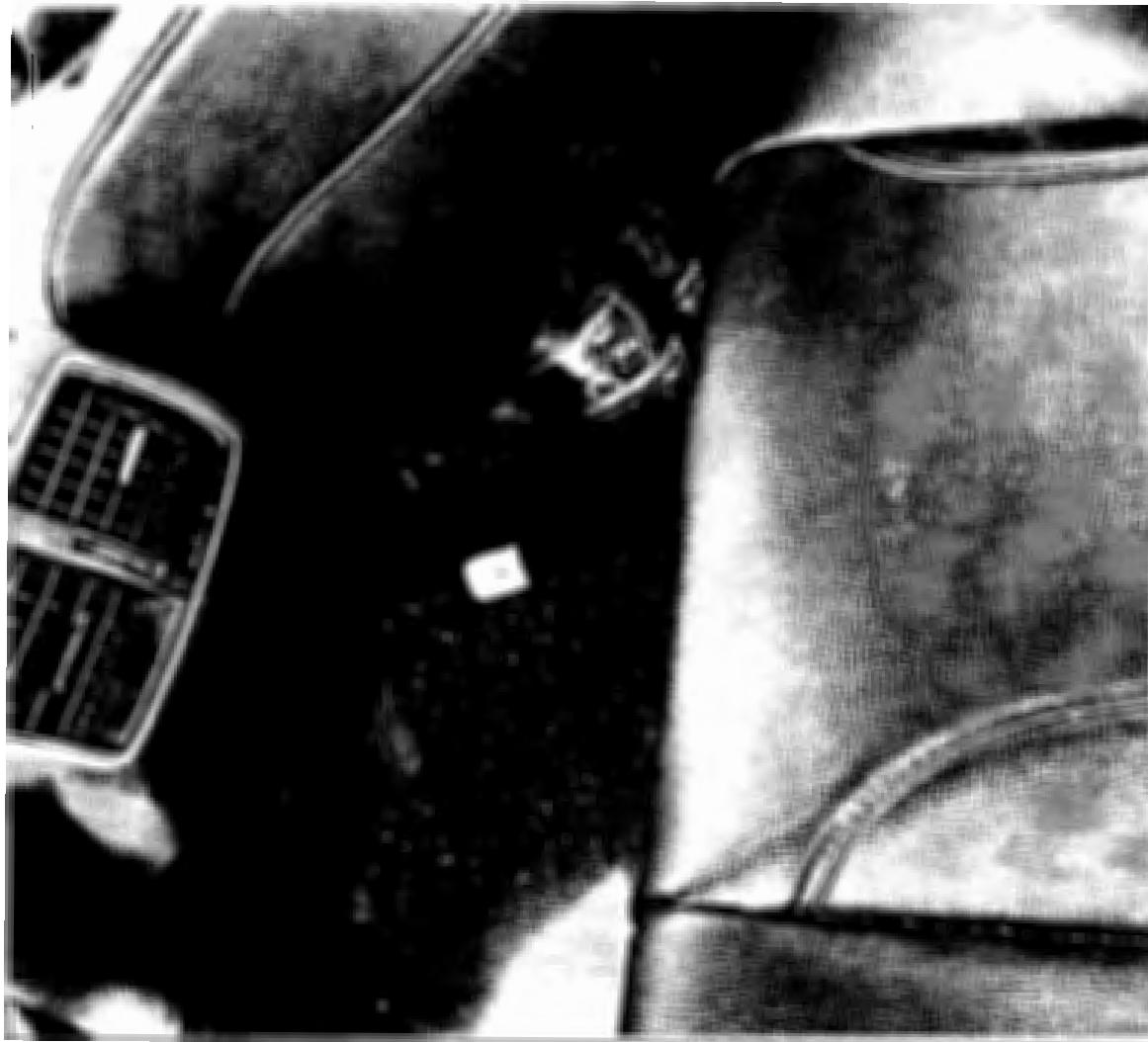
PROBABLE CAUSE

6. On January 4, 2023, Tahji Orr was observed standing outside the residence located at 139 Fox Hollies Blvd, Bessemer, Alabama 35023. Orr was standing next to a white Chevrolet pickup truck that was parked on the street directly in front of the residence. A black Acura TLX Sedan, bearing license plate number 9402BC1, was parked directly in front of the white pickup truck.

7. As arrest team members, comprised of United States Deputy Marshals and Bessemer Police Officers, approached and announced themselves as law enforcement officials, Orr fled on foot into the residence. Not wanting to bypass the occupants of the Acura sedan for safety reasons, officers approached the Acura sedan and contacted the occupants. Upon approach, officers detected an odor of marijuana emitting from the vehicle.

8. As the three occupants including Eugenio Danilo Hernandez-Figueroa were being removed from the Acura sedan, officers observed, in plain view, a bag of marijuana and a prescription bottle labeled to contain promethazine in the driver's door. Additionally, officers observed, in plain view, a Glock, model 22, 9mm conversion pistol, with an apparent machinegun conversion device installed, bearing serial number PXB562, and a large capacity magazine (ammunition feeding device). Eugenio Danilo Hernandez-Figueroa and the other two occupants were detained for

officer safety (during the barricaded standoff with Tahji Orr) and further investigation of the suspected narcotics.



9. On January 4, 2023, the affiant received a call from Deputy United States Marshal Sam Howard. Deputy Howard advised that Orr had barricaded himself in a

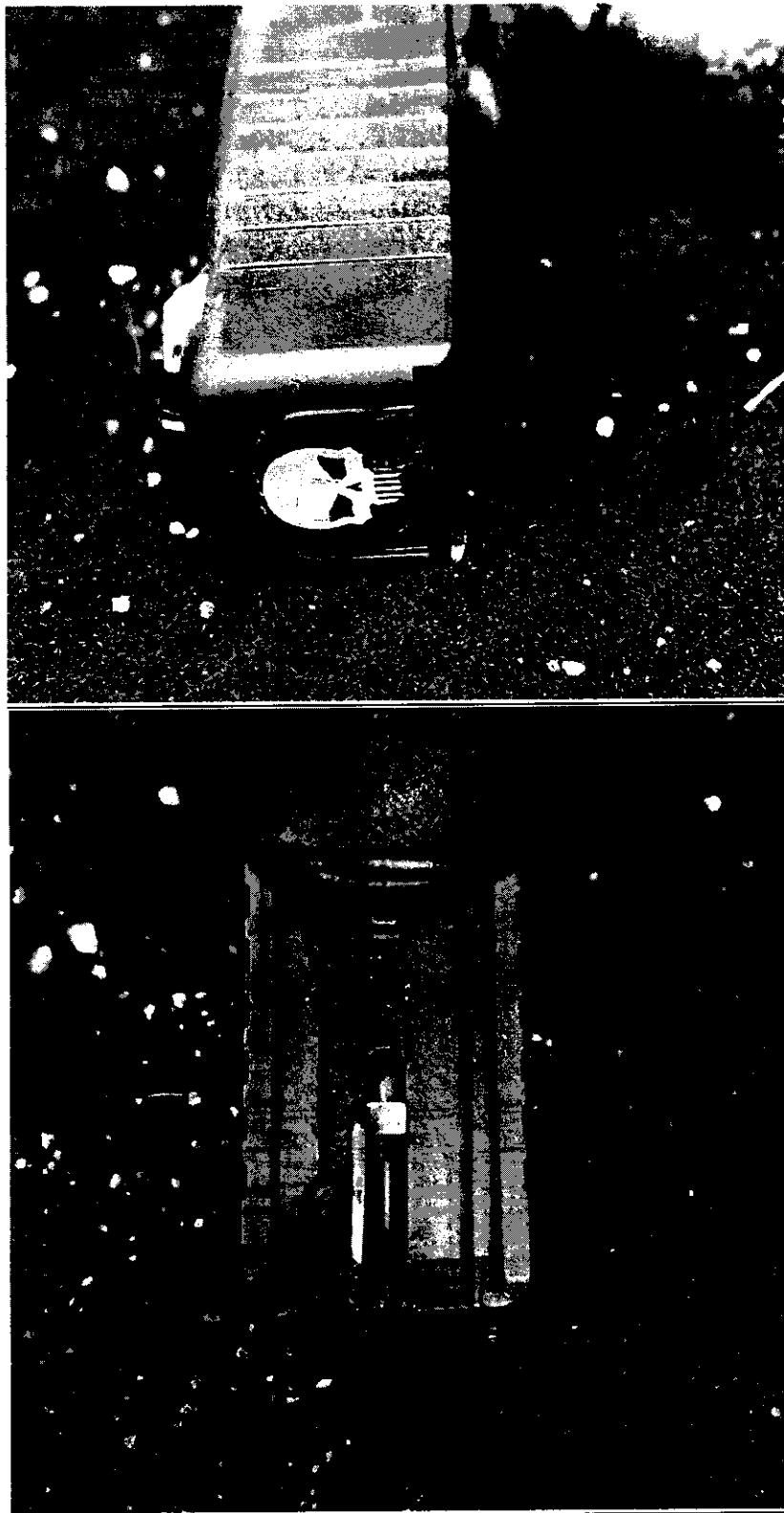
residence and had refused to surrender for arrest. After learning this information, I traveled to 139 Fox Hollies Boulevard in Bessemer, Alabama, 35020 to assist. After I arrived, I walked over to Eugenio Danilo Hernandez-Figueroa and asked him if he wanted to talk. Hernandez-Figueroa was not under arrest at the time and not in wrist restraints.

10. Hernandez-Figueroa had a consensual conversation with me as we walked back to the Acura Sedan. I inquired about the location of the firearm in the vehicle and its placement. Hernandez-Figueroa explained that Tahji Orr had given him the pistol about thirty minutes prior to law enforcement officers making their approach and that the firearm was sitting in his lap. Hernandez-Figueroa also said that he had placed the firearm behind the passenger seat because he panicked when he saw police.

11. During my physical examination of the Glock pistol, I observed a small metal piece attached to the slide rear cover plate and apparent tool marks associated with “fitting” the metal piece. The metal piece is fashioned to replicate the “leg” or “disconnector” of a “Glock switch” (machinegun conversion device). Based on my knowledge and experience, I believed that this weapon was a firearm which shoots, is designed to shoot, or was redesigned to shoot automatically more than one shot without manual reloading, by a single function of the trigger.

12. Continuing on January 4, 2023, I physically examined and photographed the Glock 9mm conversion pistol, bearing serial number PXB562. I obtained the last known ATF Firearms Transaction Record for the sale of this firearm. After having made over 700 hundred firearm and ammunition interstate nexus determinations for the ATF and other law enforcement agencies as an ATF interstate nexus trained agent, I know that the above listed Glock pistol is a firearm as defined in Title 18, U.S.C., Section 921(a)(3), and was not manufactured in the State of Alabama. It is also my opinion, based on knowledge, research and experience that the firearm moved in international and/or interstate travel and therefore had traveled in and affected interstate commerce as defined in Title 18, U.S.C., Section 921(a)(2).





13. Eugenio Danilo Hernandez-Figueroa's true identity and immigration status was called into question as he presented an international driver's license for identification to law enforcement. Hernandez-Figueroa also told officers that he had been arrested for illegal drug possession months prior, but there was no record of that arrest in the National Crime Information Center Query results. Ultimately, Hernandez-Figueroa was arrested by the Bessemer Police Department, transported to the Bessemer City Jail, and placed on a 48-hour hold.

14. Between January 4 and January 5, 2023, I spoke to Homeland Security Investigations ("HSI") Special Agent Waylon Hinkle. Together we decided that a custodial interview of Hernandez-Figueroa was appropriate to further the investigation concerning Tahji Orr and follow up with Hernandez-Figueroa concerning his residency status.

15. On January 5, 2023, the affiant, Bessemer Police Detective Charles White, HSI Special Agent Hinkle, and Jefferson County Task Force Officer Marlon Cole interviewed Hernandez-Figueroa at the Bessemer City Jail while he was in state custody. I started the recorded interview by reading Hernandez-Figueroa his *Miranda* rights verbatim from ATF Form M 3220.1. After Hernandez-Figueroa stated that he understood his rights, he advised that Tahji Orr was one of his sources for drugs.

16. Hernandez-Figueroa explained that he had known Orr for five months and that Orr allows him to hold his guns. Hernandez-Figueroa said Orr told him that the Glock 9mm conversion pistol was an automatic. Hernandez-Figueroa further stated that he knew the Glock 9mm conversion pistol was a machinegun, but he never shot the recovered machinegun.

17. Later during the interview, Hernandez-Figueroa provided consent for law enforcement to search his phone. During my initial review of photos, videos, text messages, and other data contained on Hernandez-Figueroa's phone, I observed Hernandez-Figueroa in possession of the above-described machinegun on January 1, 2023. I observed video of Hernandez-Figueroa firing said machinegun into the ground. These videos clearly depicted Hernandez-Figueroa's face and distinct arm tattoos. The video supports that the recovered Glock pistol does function as a machinegun and that Hernandez-Figueroa referred to the firearm as "a fully" (meaning fully automatic machinegun).

18. When I confronted Hernandez-Figueroa with these videos, he admitted to previously lying to me, after having been warned of federal laws pertaining to lying and providing false information to federal investigators. Hernandez-Figueroa admitted that it was him in the videos and that he had fired the recovered machinegun in the past. Hernandez-Figueroa later provided consent for law enforcement to download and make a copy of the information contained on his phone.

19. During the interview, HSI Special Agent Hinkle asked Eugenio Danilo Hernandez-Figueroa biographical questions. Hernandez-Figueroa stated he was a native and citizen of Mexico who illegally entered the United States when he was approximately five years old. After the interview, Special Agent Hinkle conducted a records checks through immigration databases which were negative for Hernandez-Figueroa. Special Agent Hinkle determined Hernandez-Figueroa was a native and citizen of Mexico who was unlawfully present in the United States. An Immigration and Customs Enforcement (ICE) detainer was placed on Hernandez-Figueroa with the Bessemer Police Department.

20. On January 6, 2023, Hernandez-Figueroa was taken into the Immigration and Customs Enforcement ICE custody from the Bessemer City Jail and transported to the Birmingham Immigration and Customs Enforcement office. While at the Birmingham Immigration and Customs Enforcement office, Hernandez-Figueroa was issued a Notice to Appear before the immigration judge for violation of Immigration and Nationality Act (INA) 212(a)(6)(A)(i), alien present without admission or parole. Hernandez-Figueroa was held in Immigration and Customs Enforcement custody pending immigration proceedings.

21. Continuing on January 6, 2023, I e-mailed photos of the recovered firearm to the ATF Firearms and Ammunition Technology Division and asked for a second opinion concerning its classification. Their response indicated that the firearm

appeared to have a machinegun conversion device known as a “Glock Chip” installed as a replacement to the standard slide cover plate.

22. Based on the above facts, the affiant believes there is probable cause to believe that Eugenio Danilo Hernandez-Figueroa, did on or about January 4, 2023, violate Title 18, United States Code, Section 922(o), in that he was in knowing possession of a firearm affixed with a machinegun conversion device.

Respectfully Submitted,

CHRISTOPHER BAKER Digitally signed by CHRISTOPHER BAKER
Date: 2023.01.09 15:42:42 -06'00'

CHRISTOPHER J. BAKER,
Bureau of Alcohol, Tobacco,
Firearms Special Agent

Sworn and subscribed telephonically to me on this 9th of January, 2023.


STACI G. CORNELIUS
United States Magistrate Judge